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D. REMARKS

Interview Summary

On July 19, 2004, Applicants' representative submitted an "Applicant Initiated Interview Request Form" to Examiner Marie C. Ubiles via email. Applicants' representative requested discussion of the rejection to claims 1 and 2.

On July 20, 2004 at 3:30 PM est, an interview was conducted via telephone between Amy Pattillo, Applicants' Representative, and Examiners Ubiles and Matar. No exhibits were shown, nor demonstrations conducted.

Applicants' representative and the Examiners discussed claim 1. Specifically, the prior art cited against claim 1 is the PCT application by Walker et al. (WO 98/35507). In particular, Applicant's representative argued that the "payment" taught by Walker et al is not equivalent to the advancement token that is "earned by the caller" in claim 1. The Examiner's responded that the combination of submitting a payment or participating in a survey to receive an advancement token is not covered by Walker et al. In conclusion, no agreement with respect to the claims was reached. Applicants are filing this response with the amended claims for further review by the Examiner.

In addition, Applicants' representative and the Examiners discussed claim 2. Specifically, the prior art cited against claim 2 is the PCT application by Walker et al. (WO 98/35507) in view of Philonenko (US 2002/0131399). In particular, Applicants' representative argued that Philonenko describes receiving instant advancement in position upon agreement to participate in a survey, but the present invention teaches earning advancement tokens that can be later redeemed. The Examiners responded that this limitation needed to be in the claims. In conclusion, no agreement with respect to the claim was reached. Applicants are filing this response with the amended claims for further review by the Examiner.

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Specification

Although not requested by the Examiner, Applicants have amended the specification above to include the application serial numbers of the related cross-references.

Claims

Applicant notes that claim 41 is amended to provide proper antecedent basis from "a call" to "said call".

35 USC § 102(e)

Claims 1, 3, 6, 8-9, 11, 13, 16, 18-19, 21, 23-24, 26-27, 29, 39, 41, 51, 53, and 57 stand rejected under 35 U.S.C. §102(e) as being disclosed by Walker et al. (WO 98/35507) "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed Cir. 1987). Furthermore the reference must be an enabling disclosure of each and every element as set forth in the claim. *In re Hoecksmas*, 158 USPQ 596, 600 (CCPA 1968); *In re LeGrive*, 133 USPQ 365, 372 (CCPA 1962). Because the Examiner does not show that DeLeeuw teaches each and every element of the claims 1, 3, 6, 8-9, 11, 13, 16, 18-19, 21, 23-24, 26-27, 29, 39, 41, 51, 53, and 57 or enables each and every element of these claims, these claims are not anticipated, the rejection should be withdrawn, and the claims should be allowed.

Claim 1

With respect to claim 1, the Examiner cites Walker et al. page 3, lines 38-40 and page 4, lines 1-6 as teaching the method of claim 1. Claim 1 currently reads:

1.(Currently Amended) A method for caller position adjustment within a calling queue comprising:

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detecting, at a calling queue, an advancement token earned by a caller at a ~~calling queue~~; and

responsive to calculating a redemption value of said advancement token, adjusting a position of said caller according to said redemption value within said calling queue, such that said caller is allowed control over said position within said calling queue.

In general, Walker et al. teaches “a system and method for enabling a caller to alter an assigned portion of a call in a queue.” [Walker et al., page 1, lines 8-10] More specifically, page 3, lines 38-40 of Walker et al. teaches a “PBX/ACD system [that] allows callers to exercise control over their rank order within a phone queue.” In particular, Walker et al teaches that:

“the ACD accesses a call database and develops offers to be made to callers based upon a caller reaching a particular position in a queue or at a position at which the call is first paced in the queue. An IVRU is employed to offer a caller a chance to move up in the queue in return for a payment. If the caller wishes to accept the offer, the caller responds by using the touch tone keys of his/her telephone and entering a credit card number, an account number, or indicating some other method of payment. The ACD then changes the rank order of the caller’s call within the phone queue and alters the rank position of other calls within the queue, accordingly.” [Walker et al., page 3, line 35-page 4, line 6]

Applicants respectfully propose that Walker et al. does not anticipate the invention of claim 1 because Walker et al. does not teach expressly or inherently the elements of “detecting an advancement token earned by a caller at a calling queue” or “responsive to a redemption value of said advancement token, adjusting a position of said caller within said calling queue.” In particular, applicants respectfully propose that Walker et al. merely teaches a method for allowing a user to pay money to change position in a hold queue and thus does not teach,

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expressly or inherently, allowing a user to redeem an advancement token earned by the caller to change position in a hold queue.

First, the Examiner cites Walker et al. page 3, lines 38-40 as teaching “an IVRU is employed to offer a caller a chance to move up in the queue in return for a payment or advancement token” and then equates this teaching to the element of “detecting an advancement token earned by a caller at a calling queue.” [Office Action, p. 2] However, the IVRU offer to a caller to advance in position is not equivalent to “detecting an advancement token”. In addition, an advancement token is not equivalent to a payment. Walker et al. only teaches the single exchange of a monetary payment for an advancement in queue position; Walker et al. does not mention redemption of an advancement token or of earning an advancement in queue position. In contrast, in the present invention the advancement token must first be earned by the caller and then exchanged for an advancement in queue position. Thus, the Examiner does not specifically point out the teaching in Walker et al. of “detecting an advancement token” or of an “advancement token earned by a caller”.

Second, the Examiner cites Walker et al. page 4, lines 1-6 as teaching “the caller responds by entering a credit card number, an account number, or some other method of payment and the ACD then changes the rank order of the caller’s call within the phone queue and alters the rank position of the other calls within the queue” and then equates this teaching to the element of “responsive to a redemption value of said advancement token, adjusting a position of said caller within said calling queue, such that said caller is allowed control over said position within said calling queue.” [Office Action, pp. 2-3] However, the teaching cited by the Examiner from Walker et al. merely teaches that a caller may enter some method of monetary payment to receive an adjustment in queue position. Further, Walker et al. merely teaches informing the caller, prior to payment, of the monetary cost associated with an adjustment in queue position. Walker et al. does not teach first determining a redemption value of a detected advancement token and then adjusting a position of a user within the queue based on the redemption value of the advancement token. In contrast, the present invention teaches advancing the caller’s position within the call queue based on the calculated redemption value of

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the advancement token which is earned. Applicants note that for purposes of clarification, claim 1 is amended to clarify that the adjustment of position in the queue is based on the calculated redemption value of the advancement token earned by the caller.

Therefore, because the Examiner does not specifically point out the teaching, either expressly or inherently, in Walker et al. for “detecting an advancement token earned by a caller at a calling queue” or “responsive to a redemption value of said advancement token, adjusting a position of said caller within said calling queue” and since Walker et al. is in fact void of any teaching of the element, claim 1 is not anticipated by Walker et al. and should be allowed.

Claims 9, 11, 19, 21, 27, 29, 41, and 53

Claims 9, 11, 19, 21, 27, 29, 41 and 53 are rejected under the same grounds as claim 1. Thus, regarding claims 9, 11, 19, 21, 27, 29, 41 and 53, Applicants respectfully propose that because the Examiner did not establish that Walker et al. anticipates claim 1, Walker et al. also does not anticipate these claims rejected for the same reasons and the claims should be allowed. Applicants note that claims 11 and 21 are amended to reflect the amendments made to claim 1.

In addition, however, Applicants respectfully note that claims 29, 41, and 53 include elements that differ from those of claim 1, and thus are not properly rejected only under the same grounds as claim 1. For example, claim 29 currently reads:

29.(Currently Amended) A method for earning an adjustment in a position within a call hold queue, comprising:

receiving at least one call transferred from a call hold queue;

enabling a caller of said at least one call to participate in at least one position adjustment service; and

responsive to a result of said caller participation in said at least one position adjustment service, transferring a token for directing adjustment of a

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position of one from among said at least one call and a future call within said call hold queue.

In addition, for example, claim 41 currently reads:

41.(Currently Amended) A system for earning an adjustment in a position within a call hold queue, comprising:

a token advancement system for receiving a call transferred from a call hold queue;

means for enabling a caller of said ~~at least one~~ call to participate in at least one position adjustment service; and

means responsive to a result of said caller participation in said at least one position adjustment service, for transferring a token for directing adjustment of a position of one from among said at least one call and a future call by said caller within said call hold queue.

Claims 29, 41, and 53 describe a system that receives a call transferred from a call hold queue, facilitates the caller participation in a position adjustment service through which the caller earns a token, and transfers the token to the call hold queue, where the token directs adjustment of the position of the current call or a future call by the same caller within the call hold queue. Claim 1 describes only the call hold queue, or "calling queue" that receives the advancement token that the caller has earned and does not describe the token advancement system at which the caller earns the advancement token. In addition, Walker et al. does not teach transferring the call to a separate token advancement system where the caller can participate in a position adjustment service. Moreover, Walker et al. does not describe a position adjustment service where a caller can earn a token that directs adjustment in the positive or negative

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direction within the call hold queue. In particular, the result of a caller's participation in a position adjustment service, such as a competition with another caller, may result in a token that directs adjustment of a position backwards in the call hold queue. (Brown et al. p. 18, lines 1-10) Thus, where the Examiner rejects claims 29, 41, and 53 for the same reasons as claim 1, the Examiner does not specifically point out the teaching in Walker, nor does Walker teach, the elements of claims 29, 41, and 53.

Claim 3

Regarding claim 3, Applicants respectfully propose that because the Examiner did not establish that Walker et al. anticipates independent claim 1, Walker et al. also does not anticipate dependent claim 3 and dependent claim 3 should be allowed. However, in addition, for the following reasons, claim 3 should be allowed.

With respect to claim 3, the Examiner cites Walker et al. page 4, lines 1-6 as teaching the method of claim 3. Claim 3 currently reads:

3.(Original) The method for caller position adjustment within a calling queue according to claim 1, wherein detecting an advancement token further comprises:

detecting said advancement token from a token advancement system communicatively connected to said calling queue.

Applicants respectfully propose that Walker et al. does not anticipate the invention of claim 3 because Walker et al. does not teach expressly or inherently the elements of "detecting an advancement token from a token advancement system communicatively connected to said calling queue." In particular, applicants respectfully propose that Walker et al. merely teaches a method for allowing a user to pay money to change position in a hold queue and thus does not teach, expressly or inherently, a token advancement system.

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First, the Examiner cites Walker et al. page 4, lines 1-6 as teaching “the caller responds by entering a credit card number, an account number, or some other method of payment and the ACD then changes the rank order of the caller’s call within the phone queue and alters the rank position of other calls within the call” and then equates this teaching to the element of “detecting said advancement token from a token advancement system communicatively connected to said calling queue.” [Office Action, p. 3] However, the Examiner merely points out that Walker et al. teaches that multiple methods of payment may be used, such as a credit card number, and does not point out any teaching by Walker et al. of a token advancement system or detecting the advancement token from a token advancement system communicatively connected to the calling queue, but merely points out that Walker et al. teaches that a caller may enter a number. Thus, the Examiner does not specifically point out the teaching in Walker et al. of a “token advancement system” or of “detecting an advancement token from a token advancement system communicatively connected to the calling queue.”

Claims 6, 13, 16, 23, 24, 39, 51, and 57

Claims 6, 13, 16, 23, 24, 39, 51, and 57 are rejected under the same grounds as claim 3. Thus, regarding claims 6, 13, 16, 23, 24, 39, 51, and 57, Applicants respectfully propose that because the Examiner did not establish that Walker et al. anticipates claim 3, Walker et al. also does not anticipate these claims rejected for the same reasons and the claims should be allowed.

In addition, however, Applicants respectfully note that claims 39, 51, and 57 include elements that differ from those of claim 3, and thus are not properly rejected only under the same grounds as claim 3. For example, claim 39 currently reads:

39.(Original) The method for earning an adjustment according to claim 29,
wherein transferring a token further comprises:

transferring said token to said call hold queue while maintaining said call
at a token advancement system.

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Claims 39, 51, and 57 describe a system where the call can be maintained at the token advancement system, where the caller can participate in position adjustment services, while the token is transferred to the call hold queue. Claim 3 only describes detecting the token from the token advancement system and does not describe the token advancement system to which a call is transferred and maintained while the token is transferred to the call hold queue. In addition, Walker et al. does not teach transferring a call that is positioned within the call hold queue to a separate token advancement system where the caller can earn tokens that are transferred back to the call hold queue to direct adjustment of call hold queue position while the token advancement system continues to maintain the call. Thus, where the Examiner rejects claims 39, 51, and 57 for the same reasons as claim 3, the Examiner does not specifically point out the teaching in Walker, nor does Walker teach, the elements of claims 39, 51, and 57.

Claims 8, 18, and 26

Regarding claims 8, 18 and 26, Applicants respectfully propose that because the Examiner did not establish that Walker et al. anticipates independent claims 1, 11, and 21, Walker et al. also does not anticipate corresponding dependent claims 8, 18, and 26 and dependent claims 8, 18 and 26 should be allowed.

35 USC § 103(a)

Claims 7, 17, 25, 40, and 52

Claims 7, 17, 25, 40, and 52 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Walker et al. (WO 98/35507) in view of Walker et al. (US Patent Number 6,178,240). Applicants respectfully propose that claims 1, 11, 21 and 41, upon which claims 7, 17, 25, 40, and 52 are dependent, have been amended for allowance, and therefore dependent claims 7, 17, 25, 40, and 52 should be allowed.

Claims 4 and 14

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Claims 4 and 14 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Walker et al. (WO 98/35507) in view of Walker et al. (US Patent Number 6,178,240). Applicants respectfully propose that claims 1 and 11, upon which claims 4 and 14 are dependent, have been amended for allowance, and therefore dependent claims 4 and 14 should be allowed.

Claims 10, 20, and 28

Claims 10, 20 and 28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Walker et al. (WO 98/35507). Applicants respectfully propose that claims 1, 11, and 21 upon which claims 10, 20, and 28 are dependent, have been amended for allowance, and therefore dependent claims 10, 20, and 28 should be allowed.

Claims 2, 12, 22, 31-32, 34-38, 43-44, 46-50, and 54-56

Claims 2, 12, 22, 31-32, 34-38, 43-44, 46-50, and 54-56 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Walker et al. (US Patent Number WO 98/35507) in view of Philonenko (US 2002/013199). Applicants note that the Examiner carries the burden of proving a prima facie case of obviousness for a 103(a) rejection. Claims 2, 12, 22, 31-32, 34-38, 43-44, 46-50, and 54-56 have been amended to overcome the 103(a) rejection, thus the rejection should be withdrawn and the claims should be allowed.

Claims 2, 12, 22, 34-36, 46-48, and 55

Regarding claim 2, the Examiner cites Walker et al. as teaching the system as claimed except for "the caller earning advancement on calling queue based on caller's participation on a survey." [Office Action, p. 7] However, the Examiner cites Philonenko as teaching "if the client is willing to take a certain survey, or agrees to participate in a study, or perhaps agrees to listen to specific advertising during the same contact period then his or her queue position can be advanced even more. (see Philonenko, P 150, lines 9-13). [Office Action, p. 7] Thus, the Examiner concludes that "it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Walker's et al. system by allowing a caller to advance his or her

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position in a queue if the caller is willing to take a survey, as taught by Philonenko, and thus in this manner allow the customer to move up in the queue without having to make a monetary contribution.” [Office Action, p. 7]

Claim 2 currently reads as follows:

2.(**Currently Amended**) The method for caller position adjustment within a calling queue according to claim 1, wherein detecting an advancement token further comprises:

detecting said advancement token earned by a caller by participating in at least one from among a competition, a survey, and a redemption of membership points during a prior call made before a current call by said caller positioned in said calling queue.

In establishing a prima facie case of obviousness under 103(a), the combined prior art references must teach or suggest all the claim limitations. *In re Vaeck*, 947 F.3d 488, 20 USPQ2d 1438 (Fed Cir. 1991). Applicants respectfully propose that the combined references do not teach or suggest the amended claimed limitation. First, Philonenko only a call queue advancement system where the call earns advancement during a current call for the caller’s participation in a survey during that current call. Philonenko does not teach enabling a caller to redeem advancement tokens that indicate the caller’s participation in a survey during a prior telephone call. The advantage of adjusting call queue position according to a redemption value of an advancement token earned at any point in time, rather than adjusting call queue position according to whether the caller participates in a survey during a current call is that a caller may carry those advancement tokens with them across multiple calls; if while the caller is participating in the survey the caller naturally moves to a position in the queue to have the call answered next, the caller would lose the incentive to participate in the survey if the Philonenko system is employed, but would retain the record of participation in an advancement token that can be detected at a later call if the current system is employed. In particular, the amended

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element of “detecting said advancement token earned by a caller by participating in at least one from among a competition, a survey , and a redemption of membership points during a prior call made before a current call by said caller positioned in said calling queue. “ teaches the advantage of basing call queue advancement based on an advancement token earned prior to the current call.

In conclusion, Applicants respectfully request allowance of claim 2 in light of the amendments that overcome the Examiner’s rejection of obviousness. In addition, claims 12, 22, 34-36, 46-48, and 55 are rejected under the same grounds as claim 2. Applicants have made amendments to claims 12 and 22 that mirror the amendments to claim 2. Further, Applicants note that claims 34-36, 46-48 and 55 are dependent upon claims 29, 41, and 53, which have been amended for allowance, and therefore dependent claims 34-36, 46-48, and 55 should be allowed. Thus, Applicants respectfully request allowance of claims 12, 22, 34-36, 46-48 and 55.

Claims 31, 32, 43-44 and 54

Applicants respectfully propose that claims 29, 41, and 53 upon which claims 31, 32, 43-44 and 54 are dependent, have been amended for allowance, and therefore dependent claims 31, 32, 43-44 and 54 should be allowed.

Claims 37-38, 49-50, and 56

Applicants respectfully propose that claims 29, 41, and 53 upon which claims 37-38, 49-50, and 56 are dependent, have been amended for allowance, and therefore dependent claims 37-38, 49-50, and 56 should be allowed.

Claims 5 and 15

Claims 5 and 15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Walker et al. (WO 98/35507) in view of Walker et al. (US Patent Number 6,178,240). In particular, the Examiner cites the same grounds for rejection of claim 31 as applying to claims 5 and 15. Applicants respectfully propose that claims 1 and 11 upon which claims 5 and 15 are

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dependent, have been amended for allowance, and therefore claims 5 and 15 should be allowed. In addition, Applicants note that claims 5 and 15 are currently amended to reflect that the caller earns an advancement token.

Claims 30 and 42

Claims 30 and 42 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Walker et al. (WO 98/35507) in view of Johnson et al. (US 2002/0196927). Applicants respectfully propose that claims 29 and 41, upon which claims 30 and 42 are dependent, have been amended for allowance, and therefore claims 30 and 42 should be allowed.

Claims 33 and 45

Claims 33 and 45 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Walker et al. (US Patent Number WO 98/35507) in view of Philonenko (US 2002/013199). Applicants respectfully propose that claims 29 and 41, upon which claims 33 and 45 are dependent, have been amended for allowance, and therefore claims 29 and 41 should be allowed.

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Conclusion

Applicants note the citation of pertinent prior art cited by the Examiner.

In view of the foregoing, withdrawal of the rejections and the allowance of the current pending claims is respectfully requested. If the Examiner feels that the pending claims could be allowed with minor changes, the Examiner is invited to telephone the undersigned to discuss an Examiner's Amendment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Amy J. Pattillo", with a long horizontal flourish extending to the right.

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